

Original

No.

6079

IN THE

# SUPREME COURT

OF THE STATE OF CALIFORNIA.

M. Z. CHAMBERLAIN,

*Plaintiff and Respondent.*

*vs.*

PACIFIC WOOL GROWING CO.,

*Defendant and Appellant.*

## TRANSCRIPT ON APPEAL

From 12th District Court, City and County of San Francisco.

J. C. BATES,

*Atty for Appellant.*

SAWYER & BALL,

*Atty's for Respondent.*

Filed

May 9<sup>th</sup>

1878.

D. B. Wood  
by H. P. Smith *deputy*

*Clerk.*

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# *In the Supreme Court*

OF THE

STATE OF CALIFORNIA.

## *Transcript on Appeal.*

### *Complaint.*

*In the District Court of the Twelfth Judicial District  
of the State of California, in and for the City and  
County of San Francisco.*

M. Z. CHAMBERLAIN,

*Plaintiff,*

*vs.*

PACIFIC WOOL-GROWING COM-  
PANY, A CORPORATION,

*Defendant.*

The plaintiff above named complaining of the  
defendant above named, and for cause states:

That said defendant is a corporation duly

orporated under the laws of this State, on or out the 1st day of September, 1872, with its nicipal place of business in the City and County San Francisco, whereof J. C. Bates is President and George Comstock is Secretary;

That on or about the 29th day of July, 1875, he City of Oakland, State of California, said corporation defendant, by its then President, D. Sackett, made its certain promissory note in writing, bearing date on that day, which said note in words and figures following, to wit:

350 100      Oakland, Cal'a, July 29th, 1875.  
Ninety days after date, without grace, I promise to pay to the order of M. Z. Chamberlain, at the Union National Gold Bank of Oakland, eight hundred and fifty dollars, with interest thereon at the rate of one per cent. per month from July 29th, 1875, until fully paid. Both principal and interest to be paid only in gold coin of the United States of America.

" D. P. SACKETT, Pres't

" Pacific Wool-Growing Co."

That then and there delivered said promissory note to said defendant;

That said plaintiff is now the lawful owner and holder of the said promissory note.

That no part of the said promissory note or of interest thereon has been paid;

That said note was executed for money loaned said plaintiff to said defendant through its President, D. P. Sackett;

That said money so loaned was used by said Sackett for the use and benefit of said Corporation defendant;

That after said loan and the use of said money, said Corporation assumed said loan and ratified and confirmed the action of said President in making said loan and giving said note;

That there is now due and unpaid to said plaintiff on said promissory note the sum of eight hundred and fifty dollars, gold coin, together with interest thereon at the rate of one per cent. per month from said 29th day of July, 1875.

That for a further and separate cause of action, said plaintiff states:

That on or about the 29th day of July, 1875, said plaintiff, at the special instance and request of said defendant, lent and advanced to said defendant the sum of eight hundred and fifty dollars, in gold coin, on condition that said sum of money should be repaid at the end of ninety days from said date last mentioned, to said plaintiff, together with interest thereon from said 29th day of July, 1875, at the rate of one per cent. per month in like gold coin;

That defendant has not paid said sum of eight hundred and fifty dollars, gold coin, and interest thereon as aforesaid, or any part thereof, and the same remains wholly due and unpaid.

Wherefore said plaintiff prays judgment against said Corporation defendant for the sum of seventeen hundred dollars, gold coin

of the United States of America, together with interest thereon from the 29th day of July, 1875, at the rate of one per cent. per month in like gold coin, and costs of suit.

SAWYER & BALL,  
Att'ys for Pl'ff.

Endorsed:] Complaint.

Filed 24th May, 1876.

THOS. H. REYNOLDS, Clerk.  
By J. D. Ruggles, Deputy Clerk.

**Demurrer.**

[Title of Court and Cause.]

Now comes the defendant, by J. C. Bates, its attorney, and demurs to plaintiff's complaint, and each cause of action therein, and for grounds demurrer, alleges:

I.

That said complaint is ambiguous, unintelligible and uncertain, in this:

a) Said complaint purports to contain two separate causes of action, and are not separately stated, so as to make each count sufficient in itself.

II.

That said first count of said complaint does state facts sufficient to constitute a cause of action;

That said first cause of action or count is ambiguous and uncertain, in this: It is not alleged that said D. P. Sackett was the President

12 in fact of said Corporation or had any authority under the by-laws of said Corporation to loan or borrow money.

III.

That said second cause of action is ambiguous and uncertain, in this:

1. It does not appear upon the face thereof whether the promise to pay interest was oral or in writing;

2. That the same does not state facts in itself and independent of the first count, sufficient to constitute any cause of action.

IV.

It does not sufficiently appear on the face of the complaint whether a single cause of action is intended, or two causes of action.

J. C. BATES,  
Attorney for Defendant.

Duly served and filed May 30th, 1876.

**Order Overruling Demurrer.**

[Title of Court and Cause.]

This action having been heretofore submitted to the Court for decision, and the Court having fully considered the facts herein, it is ordered that the demurrer to the complaint be and the same is hereby overruled, with leave to answer within ten days.

[Entered in minutes of Court Aug. 19th, 1876.]

15

*Answer.*

[Title of Court and Cause.]

Now comes the defendant in the above entitled action, and for answer to plaintiff's complaint, and to each count and separate cause of action thereof, denies each and every allegation and averment therein contained.

And for a further and separate answer and defense to the alleged causes of action contained in plaintiff's complaint, said defendant alleges:

That if said D. P. Sackett borrowed the amount  
16 of money, or any part thereof set forth in the complaint, it was for his own individual use and benefit, and not for the use or benefit or purposes of said Corporation defendant, and that said defendant never received any use or benefit of said money, or any part or parcel thereof.

And further answering, said defendant alleges that said plaintiff is not the real party in interest in the alleged cause of action, and is not nor has been the holder of said note set forth in the complaint, and knew nothing about the matter  
17 at the time of commencing this suit, on account of the fraud and deceit of said Sackett practiced upon her and upon said defendant, while pretending to act as its President.

And further answering, said defendant alleges that the alleged claim of plaintiff is fraudulent, without consideration, and brought in the interest of said Sackett for the purpose of swindling and defrauding said Company and the stockholders thereof.

18 And further answering, defendant alleges there is in truth and in fact but one single cause of action relied upon by plaintiff, and there defendant will require said plaintiff to elect the trial on which count or cause of action will rely, and dismiss as to the other.

Wherefore defendant asks judgment for costs.

J. C. BATES,

Attorney for Defendant

Served and filed Sept. 7th, 1876.

19

*Judgment on Verdict.*

[Title of Court and Cause.]

This cause came on regularly for trial, Sawyer appearing as counsel for the plaintiff, Mr. Bates for the defendant.

Thereupon a jury of twelve persons was accepted, empanelled and sworn to try said cause. Witnesses on the part of the plaintiff and defendant were then and there duly sworn and examined.

Whereupon, after hearing the evidence, arguments of counsel, and instructions of Court, the cause was submitted to the jury, retired to deliberate upon their verdict, and subsequently returned into Court, and, called, all answered to their names, and rendered the following verdict, which was accepted by the Court and entered on the minute follows:

“ We, the jury, find for plaintiff eight hundred and fifty dollars, U. S. gold coin, with interest.



21 the rate of ten per cent. per annum from Sept. 25th, 1875, to date.

"SAM. PERKINS, Foreman..

"Total amount, ten hundred and forty-six  $\frac{40}{100}$  dollars, U. S. gold coin.

"SAM. PERKINS, Foreman."

Wherefore, by virtue of the law, and the verdict aforesaid, it is ordered, adjudged and decreed that M. Z. Chamberlain, plaintiff, have and recover from the Pacific Wool-Growing Company, a corporation, defendant, in United States gold coin, the sum of ten hundred and forty-six  $\frac{40}{100}$  dollars (\$1046.40) with interest thereon at the rate of seven per cent. per annum from the date hereof till paid, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of one hundred and five  $\frac{82}{100}$  dollars (\$105.82).

Judgment recorded (J. 471) January 16th, 1878.

***Notice of Intention to Move for New Trial.***

[Title of Court and Cause.]

23 Please take notice that defendant will move this Honorable Court, at the court-room thereof, in the city and county of San Francisco, on the first day of February, 1878, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, to set aside and vacate the verdict of the jury heretofore rendered and recorded herein, and to grant a new trial of said cause. Said motion will be made upon the following grounds, viz:

24 1. Insufficiency of the evidence to justify the verdict, and that the same is against law.

2. Errors in law occurring at the trial, and excepted to by the party defendant making application for a new trial.

Said motion for a new trial will be made on bill of exceptions hereafter to be settled.

J. C. BATES,

Att'y for Def't.

To Messrs. Sawyer & Ball, att'ys for Plaintiff.

[Duly served and filed January 24th, 1878.]

25

***Bill of Exceptions.***

[Title of Court and Cause.]

Be it remembered that the above entitled cause came on regularly for trial before the Court with a jury on the 15th day of January, 1878, E. I. Sawyer appearing for plaintiff, and J. C. Bates for defendant, it was proved that defendant was corporation at all times mentioned in the complaint.

26

*D. P. Sackett*, being sworn on behalf of plaintiff, testified that from January 1st, 1875, to October 14th, 1875, he was President of the Pacific Wool-growing Company, and during that time and until commencing this suit, was the agent of plaintiff, Mrs. Chamberlain, who has been ever since January, 1875, traveling in Europe; that the only loan of money to defendant from plaintiff was for eight hundred and fifty dollars, U. S. gold coin, made on the 29th day of July, 187

27 by himself as President of the Company, without consulting with any of the directors or trustees of the Company or with plaintiff; and thereupon the promissory note set forth in the complaint, in words and figures following:

" \$850. Oakland, California, July 29th, 1875.

" Ninety days after date, without grace, I promise to pay to the order of M. Z. Chamberlain, at the Union National Gold Bank of Oakland, \$850, with interest thereon at the rate of  
28 one per cent. per month from July 29, 1875, till fully paid; both principal and interest to be paid only in gold coin of the U. S. of America.

" D. P. SACKETT,

" President Pacific Wool-growing Co.,"

Was signed by me, and I kept it in my possession till suit was commenced, when I placed the same in the hands of E. D. Sawyer, Esq'r, to commence suit upon, and that the money was used for the benefit of the Company in paying its debts.

29 Plaintiff then offered and read said note in evidence, to which defendant thereupon objected, on the grounds that there was no authority shown for said Sackett to execute said note.

2d. That said note did not purport on its face to be the note of or for the company or corporation defendant, but was that of D. P. Sackett individually. Objection overruled, the Court holding that the giving of the note might be considered

30 by the jury as tending to show delivery of money, to which defendant duly excepted.

Said money was used for the Company as follows: \$507 of which to pay my salary as President of said Company, at the rate of \$125 month.

There was no resolution of the Board Trustees fixing my salary other than that passed before I was President, in 1874, when the following resolution was adopted by the Board Trustees, but my predecessors, as President,  
31 been paid \$125 per month:

" Resolved, That D. F. Dean, as President of the Company, be allowed \$125 per month."

The balance, \$243, was used to pay bills of Company; \$1057 is charged for my salary as President of the Company from January 1875, to Oct. 14th, 1875, when I sold out to Hawes, and resigned, and my account with Company, which was settled Sept. 25th, 1875, contained said \$550 for salary paid prior to  
32 1st, 1875, and \$507 paid as salary afterwards.

I attended to the Company's business in San Francisco; spent three or four months there, paid all my traveling expenses and hotel bill of my salary.

The records of Sept. 25th, 1875, of said Company read as follows:

" Office of the P. W. G. Co.,

" Room No. 28, Stevenson Building,

" San Francisco, Sept. 25, 1875

" One o'clock P.M.

" A meeting of the Trustees of the P. W. G. Co.



33 was held at the above time and place. Present, Messrs. Sackett, Durkin, Hallinan, McChesney and Woolsey. Meeting called to order. President Sackett in the chair. Minutes of last meeting read and approved. The President read the account of receipts and expenditures since his appointment as President, showing receipts, \$7063.94; expended \$6838.94, leaving balance \$225; also, showing a loan, among receipts, of \$850. When it was moved and seconded that the action of the President be ratified in making the  
 34 loan of \$850 of Mrs. M. Z. Chamberlain. Carried. Ayes—McChesney, Woolsey; noes—Durkin and Hallinan; Mr. President gives the casting vote aye. It was moved and seconded that the President pay the interest on the note of 2,000 dollars, and request the bank to continue the note for a little while. Carried unanimously."

The witness further testified that he had been the agent of plaintiff to loan money for several years, and had loaned at least twenty thousand  
 35 dollars for her without special instructions, and that this loan was made in the usual way.

Defendant's counsel then asked witness that if one of the Trustee (naming William McChesney) who voted for allowance of said account Sept. 25th, 1875, and said loan of \$850, was not one of his students at the time and under him as his teacher, and that he was not a real or *bona fide* owner of any stock at said time, or at any time? To which question plaintiff's counsel

36 objected, on the grounds that this was long after the date of note. Objection sustained, to which ruling of the Court defendant then and there excepted.

Thereupon plaintiff rested, and defendant asked the Court to require plaintiff to elect on which cause of action set forth in the complaint plaintiff rested his case on, and for a dismissal as to the other, which application the Court denied and ruled that the complaint not being verified  
 37 he could recover on either count proved; and defendant then and there excepted.

Defendant's counsel then and there moved for a nonsuit on the first cause of action, based upon the promissory note, on the following grounds:

1. That said note set forth in plaintiff's complaint and offered in evidence, is not the note of defendant, but of said D. P. Sackett individually, and that defendant is not liable therefor.
- 38 2. That there was no authority of said Sackett shown to execute said note of the corporation defendant, and that said act being void, the President could not, by his vote, ratify his own void act.
3. That it appears that said Sackett was acting as agent and trustee of plaintiff and defendant, and the whole transaction was void, being contrary to public policy. The Court overruled the motion, and decided that if the money was received for and used by the Company, it might

39 be recovered on the common count, although the note was not the note of the Company.

Motion overruled and denied, to which ruling defendant then and there excepted.

Defendant then and there moved for a nonsuit on the second cause of action set forth in the complaint, on the following grounds:

1. That there was but one loan, for one amount of \$850, and that was on the note offered in evidence, which was in effect the note to Sackett himself.

40 2. There is no allegation that the loan mentioned in said cause of action was known to or approved by the trustees of said corporation, and therefore there was no evidence to go to the jury as to said cause of action.

Motion denied, and defendant excepted: the Court remarking that if the money was used by defendant in paying its debts, the defendant was responsible.

41 Defendant then offered to read in evidence from records of the minutes and proceedings of said corporation, in words and figures as follows:

"Trustees' meeting of the Pacific Wool-growing Company held at 434 Cal'a St., S. F., Jan. 4th, 1876. Present, Trustees Hallinan, Durkan, Comstock, Wood and Bates. President in the chair. The proceedings of meeting of Trustees of Sept. 25th, 1875, read and reconsidered, and the order of the levy of an assessment of \$4 per

42 share, vacated and set aside in toto, and so of the proceedings whereby the loan of \$8 M. Z. Chamberlain, by D. P. Sackett, acting President, was approved, is here vacated considered of no effect whatever. It appearing to the Board that the Trustees imposed upon by said Sackett in charging per month as salary, as President, and the services by said Sackett were not worth \$2½ month during his whole administration, it moved by Durkan and seconded by Hallinan 43 unanimously carried, that the said pretended of \$850 was made for his individual use benefit, and not for the benefit of the Company and therefore the Company would not pay same."

To the admission of which plaintiff's counsel objected, as inadmissible; objection sustained and evidence excluded, to which ruling defendant then and there excepted—the Court deciding that if the money was used and the obligation 44 defendant established, the defendant could escape liability by the passage of such a resolution.

Thereupon the cause was argued and submitted to the jury under instructions from the Court and a verdict was rendered for \$1046.40, U. S. gold coin, in favor of plaintiff on said 15th of January, 1878, to which defendant excepted.

Said defendant having excepted to said ver-

45 on the ground of the insufficiency of the evidence  
to justify the same, hereunder specify the partic-  
ulars in which such evidence is claimed to be  
insufficient:

1. There was no competent evidence that  
defendant ever executed the promissory note  
offered in evidence.

2. There was no competent evidence of any  
authority to make the alleged loan, and the act  
was void from its inception.

3. There was no competent evidence that said  
46 Company ever ratified the alleged loan, or that  
it could ratify a void act.

4. The evidence shows that the alleged loan  
was made without authority of the Company by  
its agent, while purporting to act for the plaintiff  
in the same capacity.

5. The evidence shows that said alleged loan  
was never legally approved by said Board of  
Trustees.

47 6. The evidence shows that the whole trans-  
action was tainted with fraud, and is void on  
the principle of public policy, because the note  
or loan was in effect, with said Sackett, and not  
plaintiff, who knew nothing about the transaction.

Said defendant hereunder specifies the errors  
of law occurring at the trial, and excepted to by  
the defendant:

1. The Court erred in admitting said note in  
evidence.

2. The Court erred in excluding evidence of

48 the record of proceedings of said Board, offered  
in evidence by defendant.

3. The Court erred in sustaining the objection  
of plaintiff to the question of her witness, Sacke  
as to one of the trustees who voted for affirmi-  
or ratifying the loan Sept. 25th, 1875.

4. The Court erred in denying defendant  
motion for nonsuit on the first cause of action.

5. The Court erred in denying defendant  
motion for nonsuit on plaintiff's second cause  
action.

49 6. The Court erred in denying defendant's  
motion requiring plaintiff to elect on which cause  
action she rested her cause, and for dismissal  
to the other.

Said Bill of Exceptions to be used on motion  
for a new trial and on appeal to Supreme Court

J. C. BATES,

Attorney for Defendant

I hereby certify that I have settled and allowed  
the foregoing Bill of Exceptions as correct, and  
50 6th day of March, 1878; and I do further certify  
that the same has been allowed and settled  
due time.

WM. P. DAINGERFIELD,

District Judge

Duly filed March 6th, 1878.

***Order Denying New Trial.***

[Title of Court and Cause.]

Defendant's motion for new trial herein brought

51 duly submitted this day, it is ordered that the same be denied.

[Entered in minutes March 6th, 1878.]

**Notice of Appeal.**

[Title of Court and Cause.]

You will please take notice that the defendant in the above entitled action hereby appeals to the Supreme Court of this State from the judgment therein recorded and entered in the said District Court on the 16th day of January A.D. 1878, in favor of the plaintiff in said action, and against said defendant, and from the whole thereof, and also from the order made and entered in the minutes of said court on the 6th day of March, 1878, denying and refusing defendant a new trial.

Dated this 15th day of March, 1878.

Yours, &c.,

J. C. BATES,

Attorney for Defendant.

53 To the Clerk of said District Court, and Sawyer & Ball, attorneys for Plaintiff.

[Endorsed:] Filed March 15th, 1878.

THOS. H. REYNOLDS, Clerk.

By J. D. Ruggles, Deputy Clerk.

Due service and receipt of a copy hereof admitted after filing, this 15th day of March, 1878.

SAWYER & BALL,

Attorneys for Plaintiff.

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**Certificate to Transcript.**

We hereby certify that the foregoing pri transcript is correct, and we hereby stipulate an undertaking on appeal in due form of law filed in this cause with the Clerk of said C within five days after the filing and serving c notice of appeal herein.

*J. C. Bates*  
J. C. BATES,

Att'y for Defendant and Appella

*Sawyer & Ball*  
SAWYER & BALL

Att'ys for Plaintiff and Respor

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San Francisco, *April 30* 1878.

Service accepted by copy, this 20th  
day of April A. D. 1878.

Sawyer & Ball  
Atty's for Respondent.